

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1029 of 2006****For Approval and Signature:****HONOURABLE MR. JUSTICE J.R.VORA****HONOURABLE MR. JUSTICE M.D.SHAH**

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?
2 To be referred to the Reporter or
not ?
3 Whether their Lordships wish to see
the fair copy of the judgment ?
Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?
5 Whether it is to be circulated to
the civil judge ?

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NATIONAL INSURANCE CO. LTD
Versus
BABUBHAI DAHYABHAI BARADIYA & ANR

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Appearance :

MS MEGHA JANI for Appellant,
MR SURESH M SHAH for Respondent No.1
None for Respondent No.2

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**CORAM : HONOURABLE MR.JUSTICE J.R.VORA
and
HONOURABLE MR.JUSTICE MD SHAH**

Date : 19/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

- 1.The appellant - National Insurance Company Limited has challenged in this appeal the award of Workmen Compensation Commissioner, Gandhidham, at Kutch delivered in Workmen's Compensation Case (N.F.) No.304/1996. By the impugned award the present respondent No.1 is awarded an amount of Rs.1,09,975/- along with running interest from the date of accident till realization at the rate of 12%.
- 2.Learned advocate Ms.Megha Jani for the appellant and learned advocate Mr.Mehul S. Shah for the respondents were heard. The matter is required to be decided finally at this stage.
- 3.The short question which arises for consideration is whether Commissioner erred in

law in passing the award with interest at the rate of 12% when the accident occurred on 29.10.1993. The issue arises from the backdrop of facts that the incident occurred on 29th October, 1993 wherein vide Section 4A of The Workmen's Compensation Act, 1923, statutory award of interest was upto 6% P.A. only and, thereafter, vide amendment which came into effect on 30th September, 1995 in Workmen Compensation Act, the statutory rate of interest was raised from 6% P.A. to 12% P.A. The award in question was declared on 10th September, 2004 and, therefore, the question is posed before us as to what rate of interest the respondents would be entitled to.

4. Learned advocate for the appellant has submitted that the question is of applying the statutory provisions and as such, is a question of law and by a decision of the Apex Court, in the matter of **Kerala State Electricity Board and Another Vs. Valsala K. and Another**, as

reported in (1999) 8 S.C.C. 254, relying upon a decision of **Pratap Narain Singh Deo Vs. Srinivas Sabata**, as reported in (1976) 1 SCC 289, the Apex Court has held that the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim. Therefore, it is submitted that the learned Commissioner altogether ignored provisions of Section 4A, as then was prevalent so far as it relates to rate of interest and awarded rate of 12% P.A. instead of 6% P.A. and that too, by an observation that the Insurance Company was liable to compensate the respondents with interest as per the bank rate. Therefore, it is urged that this substantial question of law be decided in this appeal in terms of settled law declared by the Apex Court in the matter of Kerala State Electricity Board and Another Vs. Valsala K. and Another (supra).

5. As against that, learned advocate Mr. Mehul S.

Shah for the respondents stated that in Kerala State Electricity Board and Another Vs. Valsala K. and Another, in para-7 though the rate of interest was awarded as 12% P.A., the Supreme Court refused to interfere under jurisdiction of Article 136 of the Constitution of India. Learned advocate draw our attention to a decision of the Division Bench of this Court in First Appeal No.321/2005 decided on 16th June, 2005 [Coram: B.J.Shethna and M.C.Patel, JJ.] wherein almost similar issue was not entertained by the Division Bench of this Court on the ground, firstly that since issue was not raised before the Commissioner and the issue raised was not a substantial question of law. The said decision, in the matter of Kerala State Electricity Board and Another Vs. Valsala K. and Another was referred to. Learned advocate Mr.Shah has also relied upon one more decision of the Apex Court in the matter of **Rathi Menon Vs. Union of India**, as reported in

AIR 2001 S.C. 1333, wherein while discussing the effect of amendment enhancing statutory compensation in Railway Act, after considering a decision in the matter of Kerala State Electricity Board and Another Vs. Valsala K. and Another (supra), the Hon'ble Supreme Court in para-34 has observed that nonetheless, in appropriate cases the principle of taking advantage of the beneficial legislation, subsequently enacted, is not dissented from by the larger Bench.

6. Evaluating the contentions of both the sides and without entering into the arena of the controversy that whether the question raised is substantial question of law or not, as to be entertained in this First Appeal, it would be in the interest of justice to pass orders in terms of the observations made by the Apex Court in para-34 in the matter of Rathi Menon Vs. Union of India (supra).

7. In this view of the matter, this First Appeal

is partly allowed and an award impugned is modified to the extent that the interest payable on the amount of award would be at the rate of 6% P.A. from the date of accident till 15th September, 1995 the date on which amendment came into force in The Workmen's Compensation Act and the rate of interest on the amount of compensation would be at the rate of 12% P.A. from 15th September, 1995 till realization of the awarded amount. If any excess amount is deposited by the appellant before the Commissioner, in view of the final order passed in this appeal then the said amount be refunded by the Commissioner to the appellant on making request. The rest of the amount in terms of this order be paid to the respondents. This First Appeal, thus, stands disposed of.

[J. R. VORA, J.] [M. D. SHAH, J.]

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